

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIC QUINN FRANKLIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C20-5528 BHS

ORDER

THIS MATTER is before the Court on Petitioner Eric Franklin's Federal Rule of Civil Procedure 60(b) Motion for Relief on his ineffective assistance of counsel claim, Dkt. 31, and on the Government's responsive Motion to Dismiss for Lack of Jurisdiction, Dkt. 33.

Franklin filed a 28 U.S.C. § 2255 motion in June 2020. Dkt. 1. By that time, he had served his sentence and was on supervised release. Dkt. 13. Franklin primarily asserted that he received ineffective assistance of counsel. This Court denied Franklin's § 2255 motion and declined to issue a certificate of appealability, Dkt. 18, and entered a judgment, Dkt. 19. Franklin sought to amend his § 2255 motion, Dkts. 20 and 23, and the

1 Court construed his motions as seeking reconsideration under Rule 59. It denied the
2 motions, Dkt. 26, and Franklin appealed, Dkt. 27.

3 The Ninth Circuit declined to issue Franklin a certificate of appealability,
4 determining that jurists of reason would not find it debatable whether he stated a valid
5 claim. Dkt. 29. It also denied Franklin's motion for reconsideration. Dkt. 30. The case
6 was closed.

7 Franklin now asks the Court to undo its prior order, reiterating the ineffective
8 assistance claims he asserted in his initial petition, and asserting that this Court erred in
9 failing to hold an evidentiary hearing. Dkt. 31 at 5. The Government correctly responds
10 that Franklin's motion is procedurally improper; though "disguised" as a Rule 60 motion,
11 is in effect a second or successive habeas petition, filed without authorization from the
12 Ninth Circuit. It correctly argues that this Court is without jurisdiction: "If the filing
13 presents a substantive 'claim' challenging the defendant's conviction—e.g., a new claim
14 for relief or an effort to relitigate the 'previous resolution of a claim *on the merits*' in the
15 initial §2255 motion—then the filing is a successive §2255 motion no matter how the
16 defendant has labeled it." Dkt. 33 at 4 (citing *Gonzalez v. Crosby*, 545 U.S. 524, 530–32
17 (2005)).

18 Franklin's Rule 60(b) motion raises claims attacking his sentence on the merits; he
19 asserts that his counsel was ineffective and that this Court erred in failing to hold an
20 evidentiary hearing. This is a second or successive § 2255 motion, and the Court does not
21 have jurisdiction over it. The motion is **DENIED**, the second or successive motion is
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1 **DISMISSED**, and the Court will not issue a certificate of appealability. The case remains
2 closed.

3 IT IS SO ORDERED.

4 Dated this 13th day of June, 2023.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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